OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

August 12, 2019

Via electronic mail
The Honorable Rosalyn Hathorn
Member
Board of Education
Lincoln Elementary School District 156
[redacted]

Via electronic mail
Mr. Matthew J. Walters
Hauser, Izzo, Petrarca,
Gleason & Stillman, LLC
1415 West 22nd Street, Suite 200
Oak Brook, Illinois 60523
mwalters@hauserizzo.com

RE: OMA Request for Review – 2018 PAC 58721

Dear Ms. Hathorn and Mr. Walters:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2018)). For the reasons explained below, the Public Access Bureau concludes that the Lincoln Elementary School District 156 Board of Education (Board) violated OMA at its May 3, 2019, meeting by taking final action on item that did not appear on the agenda but did not violate OMA in connection with a closed session discussion at its May 20, 2019, meeting.

BACKGROUND

On June 27, 2019, this office received Ms. Rosalyn Hathorn's Request for Review alleging that, among other things, the Board violated section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2018)) during its May 3, 2019, meeting by taking final action on matters that were not identified on the meeting agenda. Specifically, Ms. Hathorn alleged that the agenda did not indicate that the Board would vote on forming a Financial Committee and an Academics &

Technology Committee. She also alleged that the Board violated section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2018)) by discussing two policies and another matter[1] at the May 20, 2019, special meeting when those items did not appear on the agenda. Ms. Hathorn made additional allegations concerning OMA in her Request for Review; however, she agreed that the scope of this review would be limited to the actions of the Board described above at the May 3, 2019, and May 20, 2019, meetings.

On July 3, 2019, this office sent a copy of the Request for Review to the Board and asked that it provide a written response to Ms. Hathorn's allegations and copies of the agendas and minutes of the May 3, 2019, and May 20, 2019, meetings. On July 19, 2019, counsel for the Board provided a written answer and the requested materials. On July 23, 2019, this office forwarded a copy of the Board's response to Ms. Hathorn; she replied on July 30, 2019.

DETERMINATION

"The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

May 3, 2019, Meeting

Section 2.02(c) of OMA provides that "[a]ny agenda required under this Section shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting." As noted above, section 2.02(c) of OMA requires a public body to include the general subject matter of any final actions that will be taken in the agenda for the meeting. OMA does not define the term "general subject matter." However, the Senate debate on House Bill No. 4687, which added section 2.02(c) to OMA as part of Public Act 97-827, effective January 1, 2013, indicates that the General Assembly intended this provision to ensure that agendas provide general notice of all matters upon which a public body would be taking final action:

[1]Because the discussion of the policies and the other matter occurred during the closed session portion of the Board's May 20, 2019, meeting and because it is unclear whether the closed session minutes of that meeting have been determined to no longer require confidential treatment pursuant to section 2.06(d) of OMA (5 ILCS 120/2.06(d) (West 2018)), this office will not further identify the policies and matter that were discussed.

> [T]here was just no real requirement as to how specific they needed to be to the public of what they were going to discuss that would be final action. And this just says that you have to have a * * * general notice if you're going to have and take final action, as to generally what's going to be discussed so that – that people who follow their units of local government know what they're going to be acting upon. Remarks of Sen. Dillard, May 16, 2012, Senate Debate on House Bill No. 4687, at 47.

In interpreting statutes such as OMA, undefined statutory terms must be afforded their "plain, ordinary, and popular meanings[,]" which may be gleaned from dictionaries. *See, e.g., Valley Forge Insurance Co. v. Swiderski Electronics*, 223 Ill. 2d 352, 366 (2006). "General" is defined, in relevant part, as "relating to, determined by, or concerned with main elements rather than limited details." Merriam-Webster Online Dictionary, http://www.merriam-webster.com/dictionary/general. Additionally, Black's Law Dictionary defines "subject matter" as "[t]he issue presented for consideration; the thing in which a right or duty has been asserted; the thing in dispute." Black's Law Dictionary (11th ed. 2019), available at Westlaw BLACKS. Accordingly, in light of these definitions and the legislative history behind section 2.02(c), the Public Access Bureau has previously determined that "the General Assembly's use of the term 'general subject matter' signifies that a meeting agenda must set forth the main element(s), rather than the specific details, of an item on which the public body intends to take final action." Ill. Att'y Gen. PAC Req. Rev. Ltr. 45667, issued February 16, 2017, at 4-5.

The agenda for the Board's May 3, 2019, meeting stated, in relevant part:

	V.	Seating of School Board
(Tab 3)		A. Designate a President Pro Tem & Secretary Pro Tem
(Tab 4)		B. Organizational Board Meeting
(Tab 5)		C. IASB Governing Board Representative [2]

Tab 4 of the Board's agenda for the organizational board meeting stated:

I.	President Pro Tem calls meeting to order
II.	Roll Call
III.	Set Length of Term for Officers of Board

[2]Lincoln Elementary School District #156, Agenda Item V, Seating of School Board (May 3, 2019).

IV. The Election of Officers (*officers assume duty immediately upon their election*)
V. Establish, Dates, Times, and Places for Regular Board of Education Meetings (Emphasis in original.)[3]

The minutes for the May 3, 2019, meeting stated:

> Member Ross moved, seconded by Member S. McCloskey to add a Financial Committee and a Academics & Technology Committee to the current Board Committees[.]
>
> * * *
>
> Roll Call:
> Ayes: Flex, K. McCloskey, S. McCloskey, Moore and Ross
> Nays: None
> Abstain: None
> Motion Carried. [4]

The Board acknowledged that the agenda for the May 3, 2019, meeting did not include an item stating that the Board would vote on whether to add a Financial Committee and an Academics & Technology Committee. The Board, however, argued that the agenda was sufficient because it indicated there would be an organizational meeting where creating additional committees would be "a proper matter to be considered by the Board."[5] The Board further stated that its policies permit it to create additional committees.

References to "Organizational Board Meeting," "Set Length of Term for Officers of Board," and "The Election of Officers" alone are too vague and imprecise to inform the public reading the agenda in advance of the Board's meeting that the Board planned to take action to create two new committees. Because the May 3, 2019, meeting agenda did not identify the general subject matter of that action, this office concludes that the Board violated section 2.02(c) of OMA.

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[3]Lincoln Elementary School District #156, Tab 4, Agenda Item V.b., Organizational Board Meeting (May 3, 2019).

[4]Lincoln School District 156, Organizational Board Meeting, May 3, 2019, Minutes 6.

[5]Letter from Matthew J. Walters, Hauser, Izzo, Petrarca, Gleason & Stillman, LLC, to Matthew Hartman, [Assistant Attorney General], [Public Access Bureau], Illinois Attorney General's Office (July 19, 2019), at 1.

The Board also asserted that any defects in the agenda should not invalidate the Board's action to create the committees, citing section 2.02(a) of OMA. Section 2.02(a) of OMA provides, in pertinent part:

> Public notice of any special meeting except a meeting held in the event of a bona fide emergency, or of any rescheduled regular meeting, or of any reconvened meeting, shall be given at least 48 hours before such meeting, which notice shall also include the **agenda for the special**, rescheduled, or reconvened meeting, **but the validity of any action taken by the public body which is germane to a subject on the agenda shall not be affected by other errors or omissions in the agenda**. (Emphasis added.)

The Board argued that "the reorganization of the Board, and the election of the Board's officers is germane to the staffing and creation of the committees that [the] Board felt necessary to govern the District."[6] However, the above language in section 2.02(a) upon which the Board relies is limited to special, rescheduled, and reconvened meetings. The General Assembly specifically omitted that condition for errors and omissions in regular meeting agendas. *See People v. Smith*, 2016 IL 119659, ¶30, 76 N.E. 3d 1251, 1258 (2016) ("[W]here the legislature includes particular language in one section of a statute but omits it in another section of the same statute, courts will presume that the legislature acted intentionally in the exclusion or inclusion."). Thus, this office requests that the Board remedy its violation of section 2.02(c) of OMA by reconsidering its action to add the two committees after properly posting an agenda for the meeting which identifies the general subject matter of that action.

May 20, 2019, Meeting

Ms. Hathorn also alleged that that the Board violated section 2.02(a) of OMA when it discussed two policies and a separate matter at its May 20, 2019, special meeting that were not listed on the agenda for the meeting. Section 2.02(a) states that "[t]he requirement of a regular meeting agenda shall not preclude the consideration of items not specifically set forth in the agenda." The Public Access Bureau has held that a public body is not permitted under section 2.02(a) of OMA to discuss matters in open session which are not on the agenda in a special meeting. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 32604, issued April 9, 2015, at 3. ("The General Assembly's express provision for consideration of items not on the agenda at a regular meeting coupled with its silence concerning consideration of items not on the agenda at a special

[6]Letter from Matthew J. Walters, Hauser, Izzo, Petrarca, Gleason & Stillman, LLC, to Matthew Hartman, [Assistant Attorney General], [Public Access Bureau], Illinois Attorney General's Office (July 19, 2019), at 1.

meeting signifies that the General Assembly did not intend to allow a public body to consider items that are not on the agenda of a special meeting.") However, the Public Access Bureau has also held that a public body is not required to provide notice in its agenda that it will hold a closed session at a meeting. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 32669, issued December 18, 2014, at 1 ("a public body does not need to provide the reasons why it will go into closed session on a meeting agenda in order to hold a closed session at that meeting."). Similarly, a public body is not required to identify the subjects of its closed session discussion on its agenda provided it does not take final action on those items in open session. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 49292, 49360, issued August 30, 2017, at 2.

In its answer, the Board asserted that the discussions of the items identified by Ms. Hathorn "took place in the Board's closed session, [and] the Board disagrees that its actions even constitute actual consideration of the matters."[7] This office's review of the closed session minutes of the May 20, 2019, meeting furnished by Ms. Hathorn and the Board confirm that the discussion took place during the closed session portion of the special meeting. Further, a closed session was specifically listed on the agenda for the May 20, 2019, meeting, and no final action concerning the items discussed in closed session occurred during the open session portion of the meeting. Although open session discussion of items not identified on the agenda during a special meeting is not permitted under section 2.02(a) of OMA, that prohibition does not apply to closed session discussions. To hold otherwise would require a public body holding a closed session in a special meeting to specifically set forth in its agenda the main elements of each item that would be the subject of closed session discussion. Such an interpretation would undermine the intent of the General Assembly in creating the limited exceptions that allow a public body to hold discussions outside of the presence of the public. Accordingly, this office concludes that the Board did not violate OMA when it discussed in closed session items that were not on the of its May 20, 2019, special meeting.[8]

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[7]Letter from Matthew J. Walters, Hauser, Izzo, Petrarca, Gleason & Stillman, LLC, to Matthew Hartman, [Assistant Attorney General], [Public Access Bureau], Illinois Attorney General's Office (July 19, 2019), at 1.

[8]The Public Access Counselor is also charged with providing advice and education to the public. 15 ILCS 205/7(a), (c) (West 2018). In that capacity, this office notes that the topics Ms. Hathorn identified do not appear to be authorized by the section 2(c)(1) exception (5 ILCS 120/2(c)(1) (West 2018)) that the meeting minutes indicate that Board publicly cited and identified as its basis for entering closed session. The Board should be mindful of its obligation to confine its closed session discussions to topics within the scope of the exception or exceptions that it relies on to close a meeting.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at the Springfield address on the first page of this letter, mhartman@atg.state.il.us, or (217) 782-9054. This letter serves to close this file.

Very truly yours,

[redacted]

MATT HARTMAN
Assistant Attorney General
Public Access Bureau

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